

**BEFORE THE
MEDICAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Ex Parte Petition for

Interim Order of Suspension Against:

AMIR FRIEDMAN, M.D., Respondent

Physician's and Surgeon's Certificate No. A 64093

Agency Case No. 800-2018-046381

OAH No. 2022010265

INTERIM ORDER OF SUSPENSION

William Prasifka, Executive Director of the Medical Board of California (Board), Department of Consumer Affairs, petitioned for an Interim Order of Suspension (ISO), against Respondent Amir Friedman, M.D.

Joseph D. Montoya, Administrative Law Judge (ALJ), Office of Administrative Hearings (OAH), State of California, heard the matter on January 21, 2022, by video and telephone conference.

Latrice R. Hemphill, Deputy Attorney General, represented Petitioner Prasifka.

Respondent Amir Friedman, M.D., appeared by telephone, and represented himself.

Evidence was received and argument was heard. The ALJ hereby makes his factual findings, legal conclusions, and order, as follows.

FACTUAL FINDINGS

The Parties and Jurisdiction

1. Petitioner brought the Ex Parte Petition for an ISO (Petition) in his official capacity. Petitioner sought the ISO pursuant to Government Code section 11529.

2. Respondent holds Physician's and Surgeon's Certificate A 64093. It was first issued to him on December 12, 1997. According to the certificate of licensure received as exhibit 2, Respondent's Certificate was to expire in July 2021. It is inferred that Respondent's Certificate was renewed and is in effect at this time, as he continues to practice medicine, and the Points and Authorities in support of the Petition assert Respondent maintains a valid license at this time.

3. On January 11, 2022, Petitioner filed and served the Petition, and gave notice that a hearing on the Petition would be held by videoconference on January 21, 2022. This proceeding ensued.

The Pending Accusation and Underlying Criminal Conviction

4. On or about April 1, 2021, Petitioner filed an Accusation against Respondent, seeking to discipline Respondent's Certificate. The Accusation bears case number 800-2018-046381. The Accusation alleged that Respondent entered into a

plea agreement in a criminal proceeding that was pending in the United States District Court for the Central District of California, whereby he admitted he was guilty of violating title 18, United States Code, section 371, conspiracy to commit honest services mail and wire fraud and interstate travel in aid of bribery.

5. Respondent filed a Notice of Defense to the Accusation, contesting it and seeking a hearing. A hearing on the Accusation is set for January 27, 2022.

6. Since the Accusation was filed, the District Court has entered a judgment against Respondent. On October 15, 2021, in the case *United States of America v. Amir Friedman*, the court adjudged Respondent guilty of one count of violating title 18, United States Code, section 371, a felony. Essentially, Respondent was convicted of taking kickbacks and bribes from a pharmacy and marketer in exchange for providing prescriptions to that pharmacy for compounded and other drugs.

7. The court sentenced Respondent to serve 14 months in a federal prison, and upon release from prison he shall be placed on supervised release for two years, on various terms and conditions. One of those conditions is that Respondent may not engage in employment that requires a license from any governmental agency unless the federal probation officer gives written approval.

8. The court ordered Respondent to surrender to the Bureau of Prisons on or before 12 noon on April 18, 2022.

Respondent's Improper Prescriptions of Controlled Substances

9. An investigator acting on behalf of the Board found that Respondent had, during 2020, prescribed himself a number of drugs, some of those drugs being controlled substances. The controlled substances included Testosterone Cypionate and

Modafinil. In a telephone interview conducted by the investigator in September 2020, Respondent admitted he had been self-prescribing Viagra, Topamax, and testosterone. He admitted that he gave his wife the Topamax he had prescribed to himself. Pharmacy records established that Respondent had prescribed Modafinil to himself and given it to his wife.

10. Michael H. Verdolin, M.D., a board-certified anesthesiologist, opined that Respondent's self-prescription of drugs such as Amlodopine or Lisonopril, which are not controlled substances, was not a departure from the standard of care. However, Dr. Verdolin did find that testosterone cypionate is a controlled substance, as is Modafinil, and Dr. Verdolin opined that Respondent's self-prescription of those controlled substances was an extreme departure from the standard of care. In part, Dr. Verdolin relied on Health and Safety Code section 11170 which states that no one may prescribe, administer, or furnish a controlled substance to themselves. He also relied on medical ethics strictures that discourage physicians from treating themselves or their immediate families. Further, Dr. Verdolin did not find any medical basis for providing controlled substances to either Respondent or to Respondent's wife.

Other Matters

11. Respondent did not refute the Petitioner's claims that he had prescribed controlled substances for himself and had given some to his wife. He did not deny his conviction.

12. Respondent is currently practicing medicine in Sacramento, employed in a group of clinics. He attested his employer knows of his conviction. He noted he has suffered no discipline prior to this and has not had any malpractice judgments against him.

LEGAL CONCLUSIONS

1. The Board is the state agency charged with administering and enforcing the Medical Practice Act, Business and Professions Code section 2000 et seq., which governs the practice of licensed physicians and surgeons in the State of California. (Bus. & Prof. Code, § 2004.)

2. An administrative law judge may issue an interim order "suspending a license, imposing drug testing, continuing education, supervision of procedures, limitations on the authority to prescribe, furnish, administer, or dispense controlled substances, or other license restrictions." (Gov. Code, § 11529, subd. (a).)

3. An administrative law judge may issue an ISO suspending a certificate:

only if the affidavits in support of the petition show that the licensee has engaged in, or is about to engage in, acts or omissions constituting a violation of the Medical Practice Act . . . or is unable to practice safely due to a mental or physical condition, and that permitting the licensee to continue to engage in the profession for which the license was issued will endanger the public health, safety, or welfare.

(Gov. Code, § 11529, subd. (a).)

4. An administrative law judge "shall grant the interim [suspension] order where, in the exercise of discretion, the administrative law judge concludes that: (1) [t]here is a reasonable probability that the petitioner will prevail in the underlying action [and] (2) [t]he likelihood of injury to the public in not issuing the order

outweighs the likelihood of injury to the licensee in issuing the order.” (Gov. Code, § 11529, subd. (e).)

5. Petitioner bears the burden of proof; the standard of proof is a preponderance of the evidence. (Gov. Code, § 11529, subd. (e).)

6. “The board shall take action against any licensee who is charged with unprofessional conduct.” (Bus. & Prof. Code, § 2234.) Unprofessional conduct includes violating the Medical Practice Act or committing an act that would have warranted the denial of a license. (Bus. & Prof. Code, § 2234, subds. (a), (f).)

7. Unprofessional conduct also includes being criminally convicted of any criminal offense “substantially related to the qualifications, functions, or duties of a physician and surgeon” (Bus. & Prof. Code, §§ 2236, 490.) A criminal offense is “substantially related” if “it evidences present or potential unfitness of a person holding a license, certificate or permit to perform the functions authorized by the license, certificate or permit in a manner consistent with the public health, safety or welfare.” (Cal. Code Regs., tit. 16, § 1360.)

8. A physician is guilty of unprofessional conduct if he or she engages in gross negligence. (Bus. & Prof. Code, § 2234, subd. (b).) Section 2234, subdivision (e), provides that “The commission of any act involving dishonesty or corruption that is substantially related to the qualifications, functions, or duties of a physician and surgeon,” constitutes unprofessional conduct.

9. Business and Professions Code, section 2239, subdivision (a), provides in pertinent part, that it is unprofessional conduct for a physician to use, prescribe for or administer to himself or herself, any controlled substance.

10. It is very likely that the Petitioner will prevail in the underlying action, as Respondent has pled guilty to a felony involving dishonesty and corruption, proscribed by Business and Professions Code sections 2234, subdivision (e), 2236, and 490.

11. The likelihood that the public will be endangered by allowing Respondent to continue to practice between this time and April 18, 2022, when his license will automatically be suspended by his incarceration, outweighs the likelihood of injury to Respondent. After his criminal misconduct, it appears Respondent behaved unprofessionally and irresponsibly by prescribing controlled substances to himself and for his wife. His conduct, deemed an extreme departure from the standard of care, constitutes gross negligence, in violation of Business and Professions Code section 2234, subdivision (b). (*Kearl v. Board of Medical Quality Assurance*, (1986) 189 Cal.App.3d 1040, 1052-1053. [Gross negligence includes an extreme departure from the standard of care.]) Given that public protection is the Board's highest priority, Respondent's license should be suspended pending the decision on the pending Accusation, or his incarceration.

ORDER

The petition for an interim suspension order is granted. Physician's and Surgeon's Certificate, number A 64093, issued to Respondent Amir Friedman, M.D., is suspended.

Pending a final decision on an Accusation to be filed in this matter, Respondent may not practice medicine or surgery or do any act for which licensure by the Board is required.

Respondent shall be required, upon receipt of the order of suspension, to immediately deliver to the Medical Board of California, or its agent, for safekeeping pending a final administrative order of the Board in this matter, all indicia of his licensure as a physician, as contemplated by Business and Professions Code section 119, including but not limited to his wall certificate and wallet card issued by the Medical Board of California, as well as all prescription forms, all prescription drugs not legally prescribed to respondent by his treating physician and surgeon, all Drug Enforcement Administration Drug Order forms, and all Drug Enforcement Administration registrations and permits.

DATE: 01/25/2022

Joseph Montoya

JOSEPH D. MONTOYA

Administrative Law Judge

Office of Administrative Hearings